

David H. Bernstein (dhbernstein@debevoise.com)
Megan K. Bannigan (mkbannigan@debevoise.com)
Marissa MacAneney (mpmacaneney@debevoise.com)
Timothy Cuffman (tcuffman@debevoise.com)
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, New York 10022
Telephone: (212) 909-6696

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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VANS, INC. and VF OUTDOOR, LLC	:	
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Plaintiffs,	:	
	:	
-against-	:	22-cv-02156-WFK-RML
	:	
MSCHF PRODUCT STUDIOS, INC.,	:	
	:	
Defendant	:	
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DECLARATION OF JAMES KERNAN

I, James Kernan, declare as follows:

1. I work at MSCHF Product Studios, Inc. (“MSCHF”), where I am a Producer for the art collective’s projects. MSCHF has garnered worldwide recognition for its art that engages fashion, technology, and capitalism in various, often-unexpected mediums to critique society. My job responsibilities span supply chain, manufacturing, customer experience, e-commerce operations, finance, fulfillment, and staffing. I wear many hats within these functions. Among other things, I was responsible for coordinating the fulfillment of orders for *Wavy Baby* works, as well as the attempted cancellation of the fulfillment. As part of my responsibilities, I exchange many emails,

calls, and texts, and have many in-person conversations with numerous people inside and outside of MSCHF on a daily basis.

2. I make this declaration on personal knowledge and reports from MSCHF employees on whom I regularly rely, in opposition to Vans, Inc. and VF Outdoor, LLC's Letter Motion for Contempt, filed May 12, 2022.

3. As explained further below, MSCHF has undertaken significant efforts and spent significant time—starting within two hours of the Court's April 29 order—diligently working with its logistics vendor and other parties in an attempt to cancel or re-route all *Wavy Baby* orders that had not yet been delivered to purchasers. Those were orders that were shipping from China. Unfortunately, MSCHF's efforts to cancel or re-route the orders were ultimately unsuccessful as to approximately 1,786 *Wavy Baby* pieces. MSCHF's efforts to re-route the remaining orders that are still in transit with DHL are ongoing.

***Wavy Baby* Manufacturing, Sale, and Plans for Fulfillment**

4. *Wavy Baby* is a humorous, limited-edition artwork that takes the form of a shoe and critiques consumerism in sneaker culture, the blurring boundaries between the digital and physical worlds, and Vans' role in those phenomena.

5. The *Wavy Baby* works were manufactured by Qingyuan Hanjia Shoes Company Limited in a factory located in China. MSCHF communicates with Qingyuan through Gary Hanjia, based in China, who is the Qingyuan owner and serves as the liaison between MSCHF and the factory.

6. On April 18, 2022, MSCHF sold 4,306 limited-edition *Wavy Baby* art pieces through its proprietary mobile app.

7. Because the logistics necessary for a project like *Wavy Baby* are not within the expertise of the art collective, MSCHF relies on its third-party partners to handle manufacturing, shipping, and delivery of its artworks, including *Wavy Baby*. MSCHF has a contract with LW12 LLC, which is a logistics vendor that fulfills many of MSCHF's art projects from LW12's New York City warehouse. In addition to my role as a Producer at MSCHF, I am the owner of LW12 LLC. I am not involved in the day-to-day operations of LW12. I coordinated the fulfillment of *Wavy Baby* solely in my capacity as an employee of MSCHF. LW12's fulfillment of *Wavy Baby* orders through Buku (a Utah-based shipping company) was led by LW12's Warehouse Manager, Isa Zinser.

8. Of the 4,306 *Wavy Baby* pieces sold, 2,086 had already been obtained from the Chinese factory by April 18, 2022 and were being stored in a warehouse owned by LW12 in New York. The other remaining 2,220 pieces had not yet been shipped to the factory from China and instead were supposed to be sent directly to customers from China. All orders were scheduled to be shipped by April 20, 2022. *See* Ex. 1 (April 13, 2022 e-mail from LW12 to MSCHF stating "Perfect we will have everything ready").

9. For the pieces based in China, LW12 arranged for shipping and delivery of the *Wavy Baby* works through Buku, whose parent company, Tax-io, maintains a DHL account that was used to ship the *Wavy Baby* works. DHL, through DHL-China and DHL-America, handled pick-up of the *Wavy Baby* works from the third-party holding area in China, as well as physical shipping and delivery of *Wavy Baby* works. MSCHF does not have a contract or direct relationship with Tax-io. Neither MSCHF nor its contractors or partners has a contract with DHL.

Fulfillment of *Wavy Baby* Orders Prior to April 29 Court Order

10. As noted above, the fulfillment plan for *Wavy Baby* had been to sell the pieces on April 18, and then ship on April 20 from both New York and China.

11. The 2,086 *Wavy Baby* works that were based in New York City shipped according to this plan. They were all picked-up from the LW12 warehouse by the shipping carrier on April 19, 2022, for delivery to purchasers as early as April 20, as scheduled.

12. The fulfillment of the 2,220 *Wavy Baby* works from China did not go as planned. 424 of the China-based orders shipped by April 22, 2021. But I learned on April 22, 2021 from Mr. Hanjia that, contrary to his prior representations that all China-based pieces would be shipped by April 20, 2022, not all had actually shipped. DHL-China had imposed a daily shipping quota, and, as a result, 1,912 *Wavy Baby* pieces had not, as of that date, been shipped.

13. On April 26, 2022, in advance of the Court's April 27 TRO hearing, I inquired with Mr. Hanjia by email whether it was still possible to cancel the shipment of the remaining 1,912 *Wavy Baby* pieces to purchasers: *"I'd like to check if it's possible to stop the shipments from delivery to customers? Is it too late since they've already left the factory?"* See Ex. 2. Mr. Hanjia responded via email on April 26, 2022 that each of the pieces had *"left the factory and have been handed off to a third party for shipping via DHL to US customers. No, It is impossible to stop the shipments right now from delivery to customers. I am sorry , James. It is too late since the goods have left the factory, Pls understand."* See Ex. 2.

MSCHF's Efforts to Comply with Court's April 29 Order

14. At 6:22 PM EDT on Friday, April 29, 2022 this Court issued its decision and order on Vans' motion for a temporary restraining order and preliminary injunction.

15. That same evening, MSCHF began working to comply with the order, including, on April 29, by removing all references to and images of *Wavy Baby* from the MSCHF website and MSCHF's mobile app, instructing the MSCHF marketing team to cease all promotion and advertising of *Wavy Baby*, informing Tyga's team of the Court's injunction, and beginning the process of establishing an escrow arrangement for *Wavy Baby* revenue. Since April 29, 2022, MSCHF has not advertised, promoted, sold, or offered to sell any *Wavy Baby* works. Nor has MSCHF distributed, or caused to be distributed, any additional *Wavy Baby* works.

16. At 7:35 PM EDT on April 29, 2022, I emailed Isa Zinser at LW12 directing her to stop fulfillment of *Wavy Baby*: "Please cease shipping and all fulfillment of Wavy shoes." Mr. Zinser responded at 7:42 PM EDT: "Understood, fulfillment and shipping will be ceased for wavy shoes." *See* Ex. 7.

17. Also on the evening of April 29, 2022, I sent follow-up e-mails to Mr. Hanijia, David Dong (a China-based MSCHF independent contractor responsible for vendor management, among other tasks), and Robert Hu (a China-based MSCHF independent contractor responsible for vendor management and sourcing) asking them to cease all activities and not to distribute *Wavy Baby*, saying: "***Because of legal reasons I need you to cease all development and other work related to the Wavy Baby sneakers. Put everything on hold. Do not develop, produce, or distribute any thing related to Wavy Baby.***" *See* Ex. 3. Within minutes, Mr. Dong confirmed to me that he would abide

my instructions and, in addition, contact the factory and take back any remaining samples related to future *Wavy Baby* works. *See id.*

18. Although I had previously been told by Mr. Hanijia on April 26 that we could not cancel the orders or stop shipment of the *Wavy Baby* orders because the packages had left the factory and could no longer be recalled mid-transit, I attempted to re-route the packages to one of LW12's warehouses, so that the *Wavy Baby* orders could be stored there and would not reach the purchasers. I spoke to LW12 via phone to inquire whether re-routing the orders might be possible.

19. On May 3, 2022, by phone, I learned from Mr. Zinser at LW12 that, according to Buku, it might be possible for DHL to re-route the shipments from purchasers' addresses to LW12's New York warehouse. I instructed Mr. Zinser at LW12, by phone, to work with Buku and Tax-io to redirect the shipments to LW12's warehouse in the United States as soon as possible.

20. At the time, China was in the middle of a four-day national holiday, and, therefore, we did not expect to receive further information from DHL-China about the possibility of re-routing the shipments until Thursday, May 5, 2022.

21. In the meantime, because MSCHF had not yet received confirmation from LW12 regarding whether re-routing would be possible, on May 4, 2022, a MSCHF employee (Jacob Krowicki, an Operations Lead) called the general DHL-America customer service phone number to inquire about DHL's general procedures for re-routing shipments. I was told by Mr. Krowicki that on the call, the DHL-America representative suggested it would be theoretically possible to re-route orders carried by DHL. The DHL-America representative said that it might be possible to re-route all the *Wavy Baby*

orders through a software file transfer process, but it would be several days before MSCHF could find out for sure whether it was possible because the re-routing process could not begin until the units were scanned for placement onto the transport plane for transportation from China to the United States.

22. On May 6, 2022, LW12 inquired again by phone to Buku about the status of the shipments and the possibility of re-routing the orders. LW12 attempted to inquire with Buku about when the shipment might occur from DHL-China or if it would be possible to re-route the shipments to LW12, but LW12 nor Buku was able to obtain any confirmation from DHL-China. I did learn, by tracking order numbers in DHL's tracking system, that the *Wavy Baby* orders had not left China through the global DHL network, but that they were scheduled to depart on May 7, 2022.

23. On Saturday, May 7, 2022, I learned, again by tracking order numbers in DHL's tracking system, that the packages had not departed China as scheduled and were now expected by DHL to depart Monday, May 9, 2022.

24. On Saturday, May 7, 2022, I was also told via phone by Mr. Zinser at LW12 that (based on LW12's conversation with Buku) DHL might not be able to change the shipping instructions with a single file swap but rather that, in order to re-code all 1,912 labels and have the shipments re-routed, DHL might need to receive a separate email from Buku (as the DHL account holder, through Tax-io) for each package that was to be re-routed while the plane was en route from China to the United States. Regardless of whether the process could be completed via a single file swap or 1,912 separate emails, DHL representatives would then need to manually change the destination address for each of the individual shipments while they were in transit. DHL-America carriers

would then need to correctly re-route the packages to LW12's New York warehouse instead of the address physically printed on each box.

25. In order to prepare for the possibility that MSCHF would need to prepare individual emails to initiate the re-routing for the orders, on or about Monday, May 9, I organized a team at MSCHF (which included Mr. Krowicki as well as Alex Alvarez, MSCHF's Customer Service lead) that would prepare 1,912 individual emails to re-code all 1,912 labels while the plane was en route from China to the United States.

26. Despite what we were previously told and what was displayed in DHL's tracking system, the *Wavy Baby* works did not depart on May 9, 2022. I do not know why the *Wavy Baby* works were not shipped on May 9, as previously scheduled.

27. On May 9, 2022, I understand that LW12 called Buku twice to follow-up regarding the re-routing process.

28. On May 11, 2022, I checked the tracking numbers for the *Wavy Baby* works in DHL's tracking system and saw that the China-based units had shown movement within DHL's network and had begun the process of being flown to the United States.

29. With *Wavy Baby* in flight to the United States on May 11, 2022, MSCHF still did not have a firm answer from LW12 or DHL regarding the process for attempting to re-route the packages. Throughout the day on May 11, Mr. Krowicki spoke to DHL general customer service representatives three times via phone in an attempt to get a definitive answer as to whether the packages could be re-routed now that they were in flight, and the steps MSCHF (or Tax-io, as the DHL account holder) would need to undertake to initiate the re-routing. The DHL representative said that it might be able to

re-route the packages if DHL received a letter of authorization from the DHL account holder (Tax-io) that listed all tracking numbers with a bulk request to re-direct each box.

30. Based on the instructions MSCHF received from DHL via phone, MSCHF arranged (through LW12, which coordinated with Buku) to have Tax-io submit a letter to DHL directly via email, authorizing the re-routing of all shipments of the *Wavy Baby* shoes from the individual purchasers to LW12's warehouse in New York. On the morning of May 12, 2022, Mr. Zinser at LW12 confirmed to MSCHF that Buku submitted an authorization letter to DHL on May 11, 2022. *See* Ex. 4. MSCHF understood that this record confirmed that DHL would attempt to re-direct all *Wavy Baby* packages to LW12's New York City warehouse. Based on the information MSCHF received from DHL's customer service representative, MSCHF understood that this re-routing process would not change the physical labels on each box, but rather would alter the electronic routing instructions received by package handlers when they scanned the units. MSCHF was told that there was some risk that DHL would not be able to re-route all the orders before they were delivered, given the large number of orders that would need to be re-coded, the time-consuming and manual nature of the re-coding process, and the fact that DHL Express's rapid three-day shipping service would give DHL a narrow window to complete the re-codings, but we were hopeful that the re-routing would be successful.

31. On May 11, 2022 and May 12, 2022, MSCHF, through phone calls and email from Mr. Krowicki to LW12, continued to seek confirmation from LW12 (through LW12's communication with Buku and Tax-io, and Tax-io's communication with DHL)

that DHL was re-routing the *Wavy Baby* pieces to LW12's New York City warehouse, as authorized by Tax-io's written instruction.

32. At 3:39 a.m. EDT on May 13, 2022, the DHL tracking system seemed to indicate that some of the units were arriving into the United States through different gateways, where they were processed by DHL-America. That same morning, and for days thereafter, MSCHF, through LW12, sought confirmation via email from its Utah-based shipping vendor (Buku) that DHL would be shipping all units to LW12's New York City warehouse. *See* Ex. 5.

Current Fulfillment Status and MSCHF's Ongoing Efforts

33. On Friday, May 13, 2022, I learned by checking DHL's tracking numbers that despite all the various efforts from the various companies involved in attempting to re-reroute the 1,912 *Wavy Baby* pieces to LW12's New York warehouse, DHL did not successfully re-route the *Wavy Baby* orders. I am unaware of the precise reason DHL-America did not successfully re-route the 1,912 *Wavy Baby* pieces that were being shipped from China, as authorized by Tax-io via letter.

34. Each day from May 12 through May 19, MSCHF has continued to inquire via emails with DHL, through LW12, on the status of the re-routing efforts, underscoring the importance of getting any remaining undelivered units re-routed to LW12's warehouse. *See* Ex. 6.

35. As of May 20, 2022, it remains unclear exactly how many *Wavy Baby* pieces will reach the purchasers rather than be re-routed. As of 3:58 p.m. ET, according to DHL's tracking system, 1,786 pieces shipping from China have been delivered to purchasers; 2 are out for delivery; 11 are in transit; 5 failed delivery attempts occurred,

and 12 pieces are in an exception state (either because of a re-routing hold or for some other unspecified reason).

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 20, 2022 in Brooklyn, New York.



James Kernan